SUMMARY REPORT
Social and Economic Impacts of Aboriginal Land Claims Settlements: A Case Study Analysis

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Table of Contents

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British Columbia is on the verge of resolving aboriginal land claims, one of the most contentious issues in the province's history. The debate over First Nations' demands for land settlements divided the province and the nation in the past, but the establishment of a process for negotiating treaties has provided a new and clear framework for bringing this controversial matter to a satisfactory close. Most of those who have raised objections to certain aspects of the treaty process have nonetheless acknowledged that settling aboriginal land claims is a provincial priority. Moreover, there is widespread agreement within the province that negotiating treaties with the First Nations is in the best interests of all British Columbians. The decision taken in the early 1990s to proceed with the settlement of aboriginal land claims has not brought unanimous acceptance, but there remains a strong consensus that negotiated treaties are essential to end the uncertainty that surrounds the issues of land, resource use and self-government. British Columbians wonder how complex legal agreements will affect their lives and circumstances and some worry that the historic agreements will fundamentally alter the social, economic and political make-up of the province. These concerns are a logical result of the decades-long public debate about the meaning and nature of aboriginal land claims and reflect the high public expectations that have developed around the treaty-making process.

One valuable means of anticipating the potential consequences of the treaty-making process for British Columbia is to consider the nature and impact of modern land claims settlements elsewhere in Canada and in other countries. On the legal and administrative side, comparative analysis is crucial to the progress of negotiations. Lawyers have, for years, followed national and international precedents, building a case for Canadian action on the basis of decisions and actions in countries from New Zealand to the United States of America. First Nations, linked through national and international networks, have likewise tracked international developments with great interest. Northern Canadian First Nations, for example, drew heavily on the Alaska Native Claims Settlement Act in deciding what they wanted, and did not want, in their treaties.

The comparative dimension only occasionally enters into the realm of public and political discussion. British Columbians, like New Zealanders, Yukoners, Australians, Alaskans and others before them, tend to see the land claims issue and its resolution as unique to their province and their circumstances. Treaty negotiations are not particular to Canada, let alone British Columbia. Many of the same problems, uncertainties, fears and expectations currently being experienced in British Columbia have been encountered elsewhere. British Columbians have a great deal to learn from these examples, because the provincial treaty process arises out of and is influenced by international developments and settlements. There is much to gain from considering other treaties and land settlement processes. The final agreements in British Columbia will respond to the specific historical and contemporary realities of the province and of the First Nations.

A New Zealand Example

Consider, by way of illustration, a very recent example from the South Pacific. In October 1995, the Tainui (Maori) people of the Waikato District in New Zealand signed a treaty with the Government of New Zealand. The negotiation process was long and arduous and appeared, at several points, destined to run off the rails. Non-Maori (Pakeha) protests occasionally stilled the government's hand, and disagreements among the Tainui threatened to break off discussions. But proponents of a final settlement pushed ahead, leading to a final agreement in the winter of 1995. The settlement agreement received all-party endorsement and the legislation passed unanimously, and was hailed by Maori and Pakeha alike as a major step forward. Within a matter of days, the Tainui announced their plans for the implementation of the economic portions of the final settlement, which included the transfer of some Crown lands to them, the use of settlement funds to purchase commercial properties, and the establishment of major educational endowments for Tainui development. The final signatures transformed a conceptual enterprise -- the negotiation of a land settlement -- into a practical matter. The Tainui quickly assumed a role as development partners in the Waikato, investigating the prospect of participating in an expansion of the Hamilton airport, participating in a major joint venture with the regional health board, and otherwise getting on with the business of implementing the long-awaited land claims deal.

The Tainui settlement, which took place thousands of miles away from British Columbia, nonetheless offers important lessons and perspectives. The grievances behind the final agreement are very old, going back to the Treaty of Waitangi (an agreement signed in 1840 by representatives of the British government and some 550 Maori chiefs which recognized the Maori as equal citizens of New Zealand and gave assurances about control over certain land and resources) and 19th century Maori-British wars. Negotiations had continued for many years and seemed, to some observers, to be blocked by impenetrable barriers of expectations, public resentment, and government fiscal constraints. The idea of the Maori as partners and major land owners (as part of the settlement, the Tainui gained control of the campus of the University of Waikato) upset an age-old pattern of Maori-Pakeha relations. Yet the agreement and its implementation was hailed by almost all observers as a major advance.

At some point in the future -- perhaps next month, next year, in five years' time, or two decades from now -- British Columbians will go through a similar process to that of the New Zealanders. The Nisga'a land claim, very close to resolution at several points in the past few years, may well provide a Tainui-like example more relevant to British Columbia. What is quite clear is that other Canadian and international examples provide a great deal of insight and information into the likely path of British Columbia's treaty process and final settlements.

Understanding Modern Treaties

Treaties represent change and most societies, even the most innovative and forward-looking, are naturally wary of changes which can lead to substantial shifts in material, political or social conditions. The sentiment, often expressed in British Columbia, that the gains achieved by the First Nations through treaties represent a quantifiable loss to the rest of the population increases the level of uncertainty and, in some quarters, hostility surrounding land claims. British Columbians appear to support the resolution of land claims. They do, however, have questions about the content and impact of treaty settlements. To better understand the possible impact of modern treaties in British Columbia, the governments of Canada and British Columbia commissioned a study of the aboriginal settlements implemented in the past 25 years. The investigation, conducted by ARA Consulting Group, Inc., proceeded by way of a series of case studies, and involved both an analysis of the contents of the treaties and the reaction of indigenous and non-indigenous people to the settlements. The investigation did not seek to provide a quantitative evaluation of, for example, economic changes associated with the settlements. Instead, it offered a qualitative assessment of the post-treaty situation. This approach enabled the investigators to assess how the people and organizations directly affected by the settlements -- aboriginal and non-aboriginal politicians, business and community leaders -- felt about the implementation and impact of the treaties.

The modern treaty process (which is substantially different than the pre-1940s treaties signed with indigenous peoples) began in the 1960s, when national governments began to acknowledge the legitimacy of aboriginal demands for land settlements. The first of the "modern" treaties was signed in Alaska in 1971 (The Alaska Native Claims Settlement Act). Two other major agreements, the James Bay Northern Claims Settlement Act (1976) and the Aboriginal Land Rights (Northern Territory) Act (1976) followed in Australia a few years later. The Western Arctic (Inuvialuit) Claims Settlement Act, also known as the Inuvialuit Final Agreement, was signed in 1984. The passage of time in the case of these four agreements is sufficient to evaluate the impact of the settlements.

Two other agreements are more recent: the Council for Yukon Indians Umbrella Final Agreement of 1993 and New Zealand's Waikato-Tainui Deed of Settlement of 1995. The full impact of these latter two treaties will not, of course, be known for quite some time. They nonetheless provide an excellent indication of recent settlements. Taken as a group, the modern treaties have demonstrated that governments and indigenous peoples can reach agreements. They also illustrate the vital role that community participation and understanding plays in the final resolution of aboriginal land claims.

The pattern of settlements in Canada and overseas also points to a very basic reality. It is much easier to reach agreements with indigenous peoples in sparsely populated, remote regions than it is in more densely-settled agricultural and urban areas. (The Tainui settlement in New Zealand is

an important exception to this general rule.) The reasons for this pattern are several-fold. National governments in Canada, the United States and Australia have greater constitutional control over territories (and greater control over the land in Alaska) than they do over states or provinces, giving them a freer hand to negotiate. Secondly, the presence of an indigenous majority or sizable First Nations minority gives greater urgency to the resolution of outstanding claims. As well, the comparative absence of third-party interests permits greater focus to the negotiations. Finally, the national electorate does not generally see their interests as adversely effected by treaties covering lands and peoples far removed from major population centres.

British Columbia, then, represents a major shift in emphasis -- from negotiations with indigenous groups in relatively isolated, thinly-populated regions to treaty discussions with First Nations living with and amongst the 3.5 million people of a resource-rich province. Third-party interests, while important in other jurisdictions, are of vital significance in the British Columbia case. So, too, not surprisingly, is the high degree of uncertainty and public concern about the process and likely consequences -- attributes shared with every other political jurisdiction that has concluded treaty negotiations.

A Summary of the Settlements:

The past quarter century has seen a significant number of major treaty settlements. A selection of these agreements, summarized below, provide a quick overview of the nature, extent and variety of modern treaties. There are other settlements that could be included (with the Gwitch'in, Nunavut, and Sahtu Dene and Metis in the Northwest Territories, for example), but the basic structure and contents of these agreements are very close to other settlements. The examples selected for detailed analysis helps to illustrate the context within which the British Columbia treaty process is taking place and what lies ahead for the province. The settlements brought to an end lengthy, often difficult negotiations. For the indigenous peoples involved, the treaties provided financial resources, land and other considerations that, they felt, provide a foundation for approaching the future. For the governments and, through them, the non-indigenous peoples in the affected areas, the settlements resolved outstanding disputes over land tenure and resource control, gave business much-desired certainty and economic stability, and offered a new framework of relations with indigenous peoples. Alaska Native Claims Settlement Act (1971) -- U. S. A.

The discovery of a major oil deposit at Prudoe Bay on Alaska's North Slope in 1967 brought indigenous land rights to the fore. Four years later, in 1971, a highly controversial settlement was implemented. Under the Alaska Native Claims Settlement Act (ANCSA), the Natives received over $960 million, revenue sharing from resource developments, and 44 million acres of land. The agreement also called for the establishment of regional/village corporations, which were allocated the money and the resources and were, in turn, controlled by shares allocated to indigenous beneficiaries.

Most of the corporations floundered financially. In the 1980s, when it appeared possible that some of the corporations would lose control of traditional lands and resources to outside interests, the law was amended to ensure continued Native ownership. ANCSA, as the first of the modern treaties, automatically became the benchmark against which other agreements would be judged. Because of the financial difficulties and because of Alaskan Natives' frustration about the imposition of the commercial structure of the village corporation, most indigenous people subsequently pointed to the Alaskan example as a model of what to avoid.

James Bay Northern Quebec Agreement (1975) -- Canada

Similar to the situation in Alaska, the prospect of a major energy development (prodded by the Canadian courts) spurred the settlement of aboriginal land claims in Northern Quebec. The provincial government's plan for a massive hydro-electric development ran up against strong First Nations opposition. Following several years of negotiation, the Cree and Inuit of the region agreed to the James Bay Northern Quebec Agreement, thus opening the door for the James Bay hydro project.

The settlement provided the indigenous peoples with direct ownership of 14,000 sq. km., and exclusive harvesting rights over an additional 150,000 sq. kms. As well, the Cree and Inuit received preferential access to resources over a 1 million sq. km. area. Cash payments totalled $225 million, with the Cree receiving $135 million and the Inuit the remaining $90 million. One of the key elements in the deal was the establishment of the Hunters and Trappers Income Security Program, a settlement-funded support program for Native harvesters. The agreement also ensured aboriginal participation in resource management and government service delivery. As the first of the Canadian modern treaties, the James Bay and Northern Quebec Agreement established the level of expectation for other negotiations, although it turned out that the emphasis on the preservation of harvesting rights and lifestyle took greater priority in the Cree/Inuit settlement than in subsequent negotiations.

The Aboriginal Land Rights (Northern Territory) Act (1976) -- Australia

The Aboriginal people of the Northern Territory, a vast, largely desert area of Australia, began pushing for a land settlement in the 1960s. When a national referendum gave the federal government responsibility for Aboriginal affairs in 1967, Australian officials made the resolution of land matters a priority. The Aboriginal Land Rights (NT) Act, passed in 1976, afforded Aboriginal groups an opportunity to claim, and potentially gain control of, traditional lands. The initial grant accounted for 258,000 square kilometres, and was expanded through subsequent successful claims to 520,000 sq. km. The act also established Land Councils to administer the land and certain Aboriginal affairs and assured Aboriginal peoples of both a voice in future development decisions and a share of royalties from resource projects. Non-indigenous interests,

particularly in the mining sector, resented the level of control given to Aboriginal peoples and the government subsequently revised the act to give greater certainty to resource developers.

The Western Arctic (Inuvialuit) Native Claims Settlement Act (1984) --Canada

Conditions reminiscent of the Alaska situation -- namely the discovery of oil in the Beaufort Sea -- spurred the Canadian government to conclude its negotiations with the 2500 Inuvialuit of the Western Arctic. The Final Agreement, which immediately established a baseline for subsequent Canadian treaty negotiations, offered a mix of cash, land government control, and resource rights. The final settlement provided absolute title to 91,000 sq. km of land and surface rights to an additional 13,000 sq. km., a cash settlement of $152 million spread over the 1984-1997 period, special grants for economic development ($10 million) and social development ($7.5 million) and guarantees of Inuvialuit harvesting rights. In addition, the settlement assured the Inuvialuit of an ongoing role in resource management, primarily through fixed membership on environmental and resource management boards.

The Council for Yukon Indians Umbrella Final Agreement (1993) -- Canada

The most dramatic and, for British Columbians, the most relevant of the modern treaties was implemented in the Yukon Territory in 1995. Negotiations on the Council for Yukon Indians claims started in 1973, floundered several times, came within a hairs-breadth of settlement at least once, expanded to include the involvement of the territorial government at the negotiating table and then finally reached a conclusion. The Yukon treaty actually came in two stages: an Umbrella Final Agreement, signed in 1991, which set out the general terms and conditions of the settlement, and final agreements with each of the fourteen First Nations in the Yukon Territory. When the first four final agreements had been signed, the Umbrella Agreement came into full effect. The Yukon treaty is comprehensive, providing $242.7 million in cash, direct ownership of 41,400 sq. km, surface rights to an additional 15,500 sq. km., a share in government royalties from resource developments on owned lands, the opportunity to conclude self-government agreements, and a significant role in the management of the territory's renewable and non-renewable resources. The Yukon agreement, which in turn drew on the experience and details of earlier settlements, provides a valuable example that addresses many of the concerns and issues surrounding treaty negotiations in British Columbia.

The Waikato-Tainui Deed of Settlement (1995) -- New Zealand

The general background of the Waikato-Tainui Deed of Settlement was described earlier. The basic elements of the agreement are relatively straight-forward: NZ $170 million to be used toward the purchase of privately held lands for Tainui use and the allocation of approximately NZ $100 million worth of Crown lands (34,000 acres without improvements, 1,800 acres with improvements). The ongoing funding for the Tainui is to come largely from the leases and

rentals of properties transferred from the Crown. The Tainui, like other Maori groups (including those who have not yet settled their land claim), have an assured role in the evaluation of proposals for resource development and participate in the delivery of social services. Of great symbolic importance, the Deed of Settlement also includes a formal apology for the confiscation of Tainui land and an explicit acknowledgment of the important role that the Maori have played in the development of New Zealand.

The Impact of Treaties and Land Claims Settlements

The settlement packages outlined above vary greatly, reflecting time, place, legal requirements, economic urgency, political will, and national realities. In each case, however, the treaties or legislative acts ended a long-standing dispute over land and resources and provided a new framework for social, economic and political relations. So, one might fairly ask, what happened? Through the negotiation phase, proponents and opponents offered various post-settlement scenarios, ranging from economic chaos and political disharmony to cross-cultural understanding, prosperity and political cooperation. The reality, not surprisingly, is rather more complex. On some agreements -- the Yukon and Tainui deals being the prime examples -- the jury is still out. On the others, and on treaty settlements overall, there is enough history and experience to provide an overview. One caveat is necessary. Because each treaty arises out of specific historical, political, cultural and legal circumstances, it would be wrong to see any agreement, or set of agreements, as a direct model for British Columbia. Special arrangements adopted for the James Bay Cree, the Aborigines of the Northern Territory (Australia), or the Inuvialuit (Western Arctic) may have only marginal applicability in the province. The very diversity of British Columbia adds an additional complexity The following is a summary of the overall impacts derived from the comparative case study analysis.

In no case has the resolution of land claims brought political or economic chaos, although the Alaska Native Corporations did face financial difficulties. People adjusted to the new arrangements, political systems adapted, and businesses quickly found new ways of responding to the post-settlement environment. Determined opponents of land settlements, and there have been some in each case, found aspects of the settlement and implementation to criticize, but did not uncover a fatal flaw in any of the agreements. Some aspects have not worked out as planned -- the Alaskan Native Corporation model was not a general success -- and others have met expectations -- like the James Bay Hunters and Trappers Income Security Program. Not unlike most other negotiated settlements, the treaties did not (and could not) anticipate all eventualities. The Inuvialuit claim assumed the rapid development of the Beaufort Sea oil field. It has not yet occurred on the scale predicted. Treaties are not perfect, but they do provide a firm, clear and identifiable foundation for approaching the problems of the present and the future.

The business communities in the areas affected by land claims opposed negotiations initially. There was particular concern that the indigenous groups would oppose future resource

development and thereby stall economic development. Over time, business leaders came around, either convinced about the argument in favour of treaties or simply desiring certainty in the economy. In the post-settlement era, non-indigenous business leaders capitalized on new opportunities (often joint ventures with aboriginal companies), and discovered a common interest in sustainable, mutually-beneficial economic development. As negotiations progressed, community and regional leaders realized that the infusion of federal money into the region through the settlement would be a major incentive to economic growth and diversification.

All of the modern treaties have respected and accepted private land holdings and leases. Although indigenous groups have been forthright in their demand for land and resources, they have in each case accepted the rights of existing property owners. In the Tainui case, for example, where the vast majority of farm land in the Waikato has long since passed into private hands, the Maori and the New Zealand government agreed that there would be no transfer of privately-held land. The Tainui were given a reasonable cash settlement, a substantial portion of which they intend to use to purchase agricultural land at prevailing market rates.

The level of non-indigenous support for, or acceptance of, treaty negotiations and settlements is closely related to the availability of information. In the early years of the modern treaty process, negotiations proceeded in secret and with little public education or consultation with affected interests. This served to heighten uncertainty and raise fears about the likely outcomes. In those areas -- the Yukon Territory being a very good example -- where the public was kept well-informed of the progress of the discussions, public opposition and third-party concern declined substantially. In such cases, the final settlement is generally well-received and is, as in the case of the Tainui agreement, a largely symbolic acceptance of terms that are already widely known.

The most contentious issue surrounding treaty settlements relates to the management of resources. Non-indigenous fears that final agreements will block access to minerals, timber, fish, wildlife and other resources has, in almost every instance, added fuel to the fires of discontent. The existing agreements, which deal primarily with isolated, thinly-populated areas, contain numerous provisions relating to the control, regulation and exploitation of natural resources and give indigenous people a significant say in the use of those resources. The situations in other areas demonstrates that it is vital that the approaches re: resource use and control be fully explained in order to alleviate non-indigenous concerns about the future of businesses and communities that rely on resource development.

The most important reality of the post-settlement period is that life, generally, has proceeded much as before. Some areas and groups have capitalized on opportunities quickly and dramatically; others have opted for slower, longer-term growth, and invested accordingly. Following several settlements, many people expected a vast increase in local spending associated with the treaty and were surprised when the indigenous groups invested their money more broadly -- some funds on local development and training, and other capital on more financially

profitable investments outside the region. Industry officials who felt that aboriginal leaders, empowered by new political structures that gave them additional authority over resource developments, would stand in the way of economic growth have been proven correct in some jurisdictions and incorrect in others. In each instance, however, national governments maintained sufficient power in the final agreements to over-ride indigenous protests if national interests were deemed to be at stake.

Treaties have provided indigenous groups with the financial and administrative means to begin charting a new economic future for their people and their regions. The establishment of for-profit companies, joint ventures with non-indigenous corporations, community development schemes, and the like are an integral part of the settlement process and treaty implementation. Indigenous peoples have used the land claims process as a basis for participating more fully in the broader economy and, typically, have become more heavily involved with the non-indigenous population as a result of the treaty.

Indigenous groups learned from the experience of early settlements that education and training must figure prominently in post-settlement operations. Treaties typically involve an array of administrative powers and responsibilities, greater community autonomy, and economic resources. In order to capitalize on the opportunities thus presented, however, First Nations must have trained people ready to assume the task of implementing the treaty. In recent years, indigenous groups have placed a strong emphasis on education and training while the negotiations proceeded.

Underlying the treaty process is a heart-felt desire among the indigenous people to keep their language and culture strong, to recover from the difficulties of the past, and to interest non-indigenous people in their heritage. The very process of negotiating such considerations -- funding for language training, control of education, resources for cultural activities -- has awakened non-indigenous people to the passion and conviction of indigenous communities about their traditions and language. The negotiation process, while focusing heavily on legal, administrative and financial matters, has the potential to begin creating cultural bridges and to alerting non-indigenous peoples to the richness and depth of aboriginal culture. This, perhaps more than any technical or legislative initiative, may well be the most important legacy of land claims negotiations, precisely because it helps to build lasting, culturally-based links between peoples.

Taken as a group, then, the modern treaties have not caused the level of disruption, disharmony and dislocation that critics forecast although, to be fair, neither have they offered instant solutions to difficult problems, as some proponents seemed to expect. Contemporary agreements are best understood as evolutionary in nature, rather than revolutionary, modifying existing patterns of indigenous-government relations rather than over-throwing the political, economic and social status quo. Modern settlements are, in the final analysis, both less of a threat and less

of a solution than opponents and advocates have claimed. They have been, though, in places as diverse as the Canadian Arctic and the Australian outback, the catalyst for a new relationship between indigenous and non-indigenous peoples.

Conclusion

By resolving long-standing disagreements through negotiation rather than legally or politically imposed conditions, modern treaties liberate both indigenous peoples and non-indigenous peoples from contentious and difficult debates about the past. These often heated discussions -- about colonialism, dislocation, sovereignty, ownership, and the legitimacy of Native land claims -- generate a great deal of rhetoric and anger but rarely provide lasting solutions. Treaties are, ultimately, about complex legal, political and financial agreements, about compromise, and about determined efforts to bridge the gap between indigenous and non-indigenous expectations and desires. They are, perhaps most importantly, about establishing a social, political and economic framework for future relations between indigenous and non-indigenous peoples. The best agreements -- the ones likely to be of the greatest lasting benefit -- are those that become compacts between peoples and more than agreements between leaders and political institutions, for they then represent the desire to set aside existing difficulties and to embrace a shared vision of the future. In each of the modern treaty processes, discussions passed through stages -- protest and confrontation, non-indigenous scepticism and uncertainty, difficult negotiations, public debate about deals and possible deals, and euphoria mixed with weariness when the final agreement was signed. And then, following the settlement, people generally got on with business and with life. There were changes and adaptations, to be sure. But to a degree that surely must have surprised close followers of the different treaty processes, people adapted quickly to the new conditions.

British Columbians need not think that they are alone in facing the changes and uncertainty surrounding treaty settlements. There is a way of understanding and anticipating the impact of treaty negotiations that are currently underway. The modern treaty process is national and international in scope and impact, and the people of the province stand to learn a great deal by considering the experiences of others who have been down this path before. The experience with other treaty settlements provides an important window on a situation that British Columbians should now contemplate. The case studies offer a vital reassurance that those changes, although substantial, need not be unsettling and provide a portrait of a post-settlement reality that is far from chaotic or disruptive. There are also lessons here about how to proceed, particularly through the involvement and education of the public, in order to ensure widespread acceptance of the final accords and about the manner in which business, community and other interests came to support both the treaty process and the final settlement. As British Columbia moves through the treaty negotiation process, it helps to know that other people and other jurisdictions have been here before. Treaties are not a panacea, and nor are they a massive threat. They provide an

opportunity for indigenous and non-indigenous peoples to chart a common future and to establish a framework for working together, not for pulling apart.